



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
BUCHANAN MINERALS, LLC**

**Registration No. 10945**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Buchanan Minerals, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Buchanan Minerals, LLC" means Buchanan Minerals, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Buchanan Minerals, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
3. "CFR" means the Code of Federal regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "FCE" means a full compliance evaluation by DEQ staff.
7. "Facility" means the Buchanan Preparation Plant Facility, located at Garden Creek, Buchanan County, Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "PCE" means a partial compliance evaluation by DEQ staff.
11. "Permit" means the Article 3 Federal Operating Permit to operate Buchanan Preparation Plant Facility issued to Buchanan Minerals, LLC effective March 20, 2018, modified March 5, 2019.
12. "PM-10" means particulate matter 10 micrometers or less in diameter.
13. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
14. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Buchanan Minerals, LLC owns and operates the Facility in Buchanan County, Virginia. The Facility operates a thermal coal dryer and various coal handling, processing and storage equipment.

2. On July 19, 2021, DEQ staff conducted a FCE at the Facility during which excursions were identified for water supply pressure, differential pressure drop and exit gas temperatures were identified.
3. On September 3, 2021, DEQ issued an Information Request to Buchanan Minerals, LLC.
4. On September 23, 2021, Buchanan Minerals, LLC submitted a response to the Information Request.
5. On October 20, 2021, Buchanan Minerals, LLC submitted revisions to the 2019 and 2020 Title V Semi-Annual Reports and TV Annual Compliance Certifications documenting deviations observed during the July 19, 2021 FCE and as detailed in the September 23, 2021 response to the Information Request.
6. On November 23, 2021, Buchanan Minerals, LLC submitted an addendum response to the Information Request.
7. On December 7, 2021, DEQ staff conducted a PCE of the Information Request response and the Information Request revised response. Based on the evaluation and follow-up information, DEQ staff made the following observations:
  - (a) The differential pressure drop across the venturi scrubber produced readings below 21.7 inches water column for a total of 1,206 hours while the dryer was in operation between August 21, 2019 and June 30, 2021.
  - (b) The Facility failed to detect and respond using acceptable procedures to excursions in the water supply pressure and differential pressure drop across the venturi scrubber. The water supply pressure produced readings below 15 psig for a total of 3,422.4 hours while the dryer was in operation between January 1, 2020 and July 19, 2021.
  - (c) The Facility failed to develop a QIP in response to the number of exceedances or excursions for water supply pressure and differential pressure drop which exceeded 5 percent of the duration of the operating time for the thermal dryer.
8. Condition No. 9 of the Permit states: "Coal Processing and Preparation Equipment Requirements - (S017/S017A) - Limitations - The differential pressure drop across the venturi scrubber shall be a minimum of 21.7 inches of water."
9. 9 VAC5-80-110 states in part: " B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards: 1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure

compliance with all applicable requirements at the time of permit issuance..."

10. Condition No. 35 of the Permit states: "Coal Processing and Preparation Equipment Requirements - (S017/S017A) - Compliance Assurance Monitoring (CAM) - The permittee shall conduct the monitoring and fulfill the other obligations specified in 40 CFR 64.7 through 40 CFR 64.9."
11. Condition No. 39 of the Permit states: "Coal Processing and Preparation Equipment Requirements - (S017/S017A) - Compliance Assurance Monitoring (CAM) - Determination that acceptable procedures were used in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process."
12. 40 CFR 64.7(d)(2) states: "Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process."
13. Condition No. 41 of the Permit states in part: "Coal Processing and Preparation Equipment Requirements - (S017/S017A) - Compliance Assurance Monitoring (CAM) - If the number of exceedances or excursions exceeds 5 percent duration of the operating time for the thermal dryer for a semiannual reporting period, the permittee shall develop, implement and maintain a Quality Improvement Plan (QIP) in accordance with 40 CFR 64.8. If a QIP is required, the permittee shall have it available for inspection..."
14. 40 CFR 64.8(a) and (b) state: "(a) Based on the results of a determination made under § 64.7(d)(2), the Administrator or the permitting authority may require the owner or operator to develop and implement a QIP. Consistent with § 64.6(c)(3), the part 70 or 71 permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(b) Elements of a QIP:

- (1) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.
  - (2) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for conducting one or more of the following actions, as appropriate:
    - (i) Improved preventive maintenance practices.
    - (ii) Process operation changes.
    - (iii) Appropriate improvements to control methods.
    - (iv) Other steps appropriate to correct control performance.
    - (v) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (b)(2)(i) through (iv) of this section)."
15. On December 21, 2021, based on the July 19, 2021 FCE, the September 23, 2021 response to the Information Request, additional information received November 23, 2021 and the December 7, 2021 PCE, the Department issued Notice of Violation No. ASWRO001999 to Buchanan Minerals, LLC for the alleged violation described in paragraph C(7), above.
16. Upon further review of the addendum response to the Information Request, submitted November 23, 2021, DEQ staff made the following observation:
  - (a) The Facility had exceeded the permitted PM-10 emission limit of 0.019 gr/dscf for 11 hours over 7 days during the time period November 16, 2019 through February 18, 2021.
17. Condition No. No. 10 of the Permit states in part: "Emissions from the operation of the thermal dryer shall not exceed the limits specified below: ...PM10 0.019 gr/dscf..."
18. 9 VAC5-80-110 states in part: " B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards: 1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance..."
19. On December 29, 2021, DEQ received a response to the NOV from the Facility.

20. Based on the results of the July 19, 2021 FCE, the September 23, 2021 response to the Information Request, additional information received November 23, 2021, the December 7, 2021 PCE and the December 29, 2021 NOV response, the Board concludes that Buchanan Minerals, LLC has violated Conditions 9, 10, 35, 39 and 41 of the Permit; 9 VAC 5-80-110; 40 CFR 64.7(d)(2); and 40 CFR 64.8(a) and (b) as described in paragraphs C(7) through C(14) and C(16) through C(18), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Buchanan Minerals, LLC, and Buchanan Minerals, LLC agrees to:

1. Perform the actions described in Appendix A of this Order, and:
2. Pay a civil charge of \$26,819 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Buchanan Minerals, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Buchanan Minerals, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Buchanan Minerals, LLC for good cause shown by Buchanan Minerals, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ASWRO001999, dated December 21, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2)

seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Buchanan Minerals, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Buchanan Minerals, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Buchanan Minerals, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Buchanan Minerals, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Buchanan Minerals, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Buchanan Minerals, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Buchanan Minerals, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Buchanan Minerals, LLC. Nevertheless, Buchanan Minerals, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after Buchanan Minerals, LLC has completed all of the requirements of the Order;
  - b. Buchanan Minerals, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Buchanan Minerals, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Buchanan Minerals, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Buchanan Minerals, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Buchanan Minerals, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Buchanan Minerals, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Buchanan Minerals, LLC.



14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Buchanan Minerals, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2022.



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Jeffrey L. Hurst, Regional Director  
Department of Environmental Quality

Buchanan Minerals, LLC  
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Buchanan Minerals, LLC voluntarily agrees to the issuance of this Order.

Date: 3/10/2022 By: Brett Holbrook  
Brett Holbrook, Vice President  
Buchanan Minerals, LLC

Commonwealth of Virginia

City/County of Raleigh

The foregoing document was signed and acknowledged before me this 10th day of

March, 2022, by Brett Holbrook who is

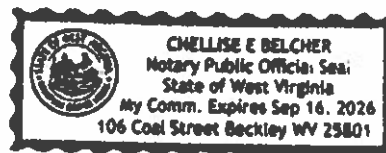
VP of Buchanan Minerals, LLC, on behalf of the company.

Chellise E. Belcher  
Notary Public

295032  
Registration No.

My commission expires: Sept 16, 2026

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. **Buchanan Minerals, LLC :**

Shall submit a compliance plan detailing review of operation and maintenance procedures, monitoring procedures, review of monitoring results and recordkeeping actions taken to prevent future excursions and exceedances of the differential pressure drop across the venturi scrubber and water supply pressure during operation of the thermal dryer. The compliance plan is due within 30 days of the issuance of this Order.

2. **Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Buchanan Minerals, LLC, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. **DEQ Contact**

Unless otherwise specified in this Order, Buchanan Minerals, LLC shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk  
Enforcement and Air Compliance/Monitoring Manager  
VA DEQ – SWRO  
355-A Deadmore Street  
Abingdon, Virginia 24210  
(276) 676-4829  
crystal.bazyk@deq.virginia.gov